

United States District Court
Southern District of Texas
FILED

OCT 23 2018

THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

4:17cv1930



No. 18-20163

David J. Bradley, Clerk of Court

A True Copy
Certified order issued Oct 23, 2018

FRANKLIN CARL JONES,

Tyke W. Caylor
Clerk, U.S. Court of Appeals, Fifth Circuit
Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Southern District of Texas

ORDER:

Franklin Carl Jones, Texas prisoner # 1224452, was convicted by a jury of aggravated robbery and received a sentence of 50 years in prison. The district court denied his 28 U.S.C. § 2254 petition as untimely. In addition, the district court denied his motion to alter or amend the judgment, filed pursuant to Federal Rule of Civil Procedure 60(b), in which Jones challenged the district court's conclusion that he was not entitled to equitable tolling. He now seeks a certificate of appealability (COA), in which he argues that his trial counsel rendered ineffective assistance and that the trial court lacked jurisdiction over the criminal proceedings because he was incompetent to proceed.

To obtain a COA, Jones must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(3). This requires him to

No. 18-20163

demonstrates “that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Jones’s notice of appeal is timely only as to the district court’s denial of his Rule 60(b) motion. Because Jones has failed to brief any argument challenging the denial of his Rule 60(b) motion, he has abandoned the sole ground for appeal. *See Bailey v. Cain*, 609 F.3d 763, 767 (5th Cir. 2010); *Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999). He has not established that reasonable jurists would conclude that the denial of Rule 60(b) relief constituted an abuse of discretion. *See Hernandez v. Thaler*, 630 F.3d 420, 428 (5th Cir. 2011).

Accordingly, Jones’s motion for a COA is DENIED. His motion for leave to file amended exhibits is likewise DENIED.

/s/ *Priscilla R. Owen*

PRISCILLA R. OWEN

UNITED STATES CIRCUIT JUDGE

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

October 23, 2018

Mr. David J. Bradley
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 18-20163 Franklin Jones v. Lorie Davis, Director
USDC No. 4:17-CV-1930

Dear Mr. Bradley,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Gardner

By:
Christina A. Gardner, Deputy Clerk
504-310-7684

cc w/encl:

Mr. Franklin Carl Jones
Ms. Jessica Michelle Manojlovich
Mr. Edward Larry Marshall